

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JEAN A. BLAIR,	)	
	)	
Plaintiff	)	
	)	
v.	)	
	)	Civil No. 09-1501
MICHAEL ASTRUE,	)	
Commissioner of	)	
Social Security,	)	
	)	
Defendant	)	

O R D E R

AND NOW, this 6th day of July 2010, after the plaintiff, Jean A. Blair (the "Plaintiff"), filed an action in the above-captioned case, and after cross-motions for summary judgment were submitted by the parties, and after a Report and Recommendation and a Supplemental Report and Recommendation were filed by the United States Magistrate Judge granting the parties fourteen days after being served with copies to file written objections thereto, and upon consideration of both sets of objections<sup>1</sup> filed by defendant Commissioner of Social Security (the "Defendant"), and upon

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<sup>1</sup>Defendant points to the January 22, 2007 opinion of Dr Okonkwo that Plaintiff was disabled as being a conclusion which the administrative law judge does not need to credit. While that conclusion is correct, Defendant glosses over the medical evidence of record after November 21, 2007, the date of the non-examining physician's report, which was relied upon by the administrative law judge. Notably the magistrate judge points to the evidence after that date which supports Plaintiff's symptoms. Supplemental Report and Recommendation at 3-4. The longitudinal nature of the treatment of Plaintiff by Dr. Okonkwo and the lack of a contrary medical opinion that considers the medical evidence from November 21, 2007 until January 22, 2009, warrants a remand. See Frankenfield v. Bowen, 861 F.2d 405, 408 (3d Cir. 1988) ("[T]he medical judgment of a treating physician can be rejected only on the basis of contradictory evidence."); Kent v. Schweiker, 710 F.2d 110, 114-15 (3d Cir. 1983).

independent review of the motion and the record, and upon consideration of the Report and Recommendation (Docket No. 15) and Supplemental Report and Recommendation (Docket No. 18), which are adopted as the opinion of this court,

IT IS ORDERED that the Plaintiff's motion for summary judgment (Docket No. 11) and the Defendant's motion for summary judgment (Docket No. 13) are denied without prejudice and that the matter be remanded for further evaluation and consideration. The clerk shall mark this case closed.

IT IS FURTHER ORDERED that pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure if the plaintiff desires to appeal from this Order he must do so within thirty (30) days by filing a notice of appeal as provided in Rule 3 of the Federal Rule of Appellate Procedure.

By the court,

/s/ JOY FLOWERS CONTI  
Joy Flowers Conti  
United States District Judge